

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California American Water Company (U 210 W) for an order authorizing it to increase its rates for water service in its Monterey District to increase revenues by \$9,456,100 or 32.88% in the year 2006; \$1,894,100 or 4.95% in the year 2007; and \$1,574,600 or 3.92% in the year 2008; and for an order authorizing sixteen Special Requests with revenue requirements of \$3,815,900 in the year 2006, \$5,622,300 in the year 2007, and \$8,720,500 in the year 2008; the total increase in rates for water service combined with the sixteen Special Requests could increase revenues by \$13,272,000 or 46.16% in the year 2006; 7,516,400 or 17.86% in the year 2007; and \$10,295,100 or 20.73% in the year 2008.

Application 05-02-012
(Filed February 28, 2005)

In the Matter of the Application of California-American Water Company (U 210 W) for Authorization to Increase its Rates for Water Service in its Felton District to increase revenues by \$796,400 or 105.2% in the year 2006; \$53,600 or 3.44% in the year 2007; and \$16,600 or 1.03% in the year 2008; and for an order authorizing two Special Requests.

Application 05-02-013
(Filed February 28, 2005)

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S
RULING AND SCOPING MEMO**

1. Summary

This ruling and scoping memo (Scoping Memo) decides the scope of issues to be heard in this proceeding based on the issues raised (1) in protests to the applications, (2) at the April 5, 2005 prehearing conference (PHC), and (3) at the four public participation hearings (PPHs) held in Monterey and Felton on May 12 and 13, 2005. We also rule on the April 18, 2005 motion of California-American Water Company (Cal-Am) to deny party status to the Monterey Commercial Property Owners Association (MCPOA), the Pajaro/Sunny Mesa Community Services District (PSMCSD), and Public Citizen.

For the administrative efficiency of the Commission and interested parties, we consolidate the two applications for purposes of evidentiary hearings.

In accordance with Rule 6(a)(3) of the Commission's Rules of Practice and Procedure (Rules), this scoping memo designates the category of this proceeding, the need for hearing, and the principal hearing officer, and sets forth the procedural schedule. Pursuant to Rule 6.4, this scoping memo is appealable only as to category of the proceeding.

2. Background

Cal-Am's general rate case (GRC) applications for the Monterey and Felton districts are made pursuant to the new three year GRC cycle requirements for Class A water utilities set forth in Pub. Util. Code Section 455.2 and adopted by the Commission under its new rate case plan (RCP) in Decision (D.) 04-06-018.¹ The RCP provides for each utility to file a GRC application every three years, complete with specified documentation and supporting material, and for the

¹ Class A utilities are investor owned water utilities with greater than 10,000 service connections. All Section (§) references are to the Public Utilities Code.

Commission to process each application under a twelve month procedural schedule. For the 2005 transitional first year filings under the RCP, we adopted in D.04-06-018 an expedited schedule, allowing a February 1 rather than January 1 filing date while retaining a projected completion date by the end of the calendar year; Cal-Am's Monterey and Felton districts are included in the February 2005 filing schedule.

On February 16, 2005, Cal-Am filed its applications for the Monterey and Felton districts but did not serve the parties on its service list. On February 28, 2005, Cal-Am filed amended applications and served all parties. Notices of the amended applications appeared in the Commission's Daily Calendar on March 3, 2005, with protests due by April 4, 2005.²

Protests to Cal-Am's Monterey application were filed by the Independent Reclaimed Water Users Group (IRWUG), MCPOA, Monterey County Water Resources Agency (MCWRA), Monterey Peninsula Water Management District (MPWMD), the Commission's Office of Ratepayer Advocates (ORA), PSMCSD, Public Citizen, and the United States Department of Defense and other affected Federal Executive Agencies (DOD).³ Protests to Cal-Am's Felton district application were timely filed by the Felton Friends of Locally Owned Water

² On March 21, 2005, an administrative law judge (ALJ) ruling memorialized the filing delays, confirmed the protest date, directed Cal-Am to file a revised procedural schedule by March 25, 2005, set a pre-hearing conference (PHC) for April 5, 2005, and provided interested parties an opportunity to file PHC statements addressing the revised procedural schedule and the scope of issues contained in the applications by March 30, 2005.

³ Public Citizen received permission from the ALJ to file its protest one day late. All other protests were timely filed.

(Felton FLOW) and ORA.⁴ PHC statements were filed by Cal-Am, the County of Monterey and MCWRA, DOD, and ORA.

At the April 5 PHC, the scope of issues was discussed, a preliminary expedited procedural schedule was set, and public participation hearings were scheduled for both Monterey and Felton. In considering whether any pre-construction costs for the Coastal Water Project should be included in this proceeding, the ALJ directed Cal-Am to file a breakdown of its Special Request #2 in its Monterey application by type of expense and when the expense was expected to occur; the ALJ also provided all parties an additional opportunity to address the issue.

Due to problems with the accuracy of numbers in Cal-Am's recent applications and public notices, the ALJ at the PHC directed Cal-Am to quickly perform an independent verification of both applications. On April 29, 2005, Cal-Am filed its verification, with corrected pages. An eleven page matrix attached at RUI-4 details the corrections and Cal-Am's cover letter characterizes the corrections as being of a minor dollar amount.

Public participation hearings (PPHs) were held at 2 p.m. and 7 p.m. on May 12, 2005 in Monterey and on May 13, 2005 in Felton, California. All sessions were well attended and transcribed, and many of the questions raised will be responded to by Cal-Am in writing, with copies to the Commission and the service list.

⁴ On April 14, 2005, Cal-Am filed a reply to the protests.

3. Categorization, Need for Hearings, Ex Parte Rules, and Designation of Principal Hearing Officer

This proceeding has been preliminarily categorized as ratesetting, as that term is defined in Rule 5(c),⁵ and this ruling affirms that categorization. Parties in their protests and prehearing statements state there is a need for evidentiary hearings; no party objects to hearings. This ruling determines that evidentiary hearings are required and sets a procedural schedule for such hearings.

In a ratesetting proceeding, Rule 5(k)(2) defines the “presiding officer” as the principal hearing officer designated as such by the Assigned Commissioner prior to the first hearing in the proceeding. The undersigned Assigned Commissioner designates ALJ Christine M. Walwyn as the principal hearing officer.

The Commission’s ex parte rules applicable to this proceeding are set forth in Rules 7(c) and 7.1. These ex parte rules apply to all parties of record and, more broadly, to all persons with an interest in any substantive matter; the broad category of individuals subject to our ex parte rules is defined in § 1701.1(c)(4) and Rule 5(h).

4. Scope of the Proceeding

Issues for hearing in a GRC proceeding are very broad, as this is the comprehensive proceeding that reviews all aspects of a company’s operations, utility plant, capital structure, capital budget, customer service, customers’ rates

⁵ This and subsequent rule citations refer to the Commission’s Rules of Practice and Procedure.

and service quality.⁶ Cal-Am states that the primary factors behind its request for increased rates for Monterey are pensions and benefits, capital expenditures, and depreciation; the primary factors for Felton are increased labor costs, pensions and benefits costs and capital expenditures. In addition, Cal-Am includes in its applications 16 special requests for surcharges to recover historical costs related to the Carmel River Dam project and forecasted construction costs for the anticipated Coastal Water Project (CWP), memorandum accounts for possible fines, new conservation rate design, and emergency tariffs for its Monterey district and two special requests, to eliminate the conservation discount program and to adopt a low-income tariff, for its Felton district.

The size of Cal-Am's proposed rate increases for Monterey and Felton have drawn much opposition. Many issues concerning Cal-Am's operations, proposed capital expenditures and recovery requests, conservation rate design proposals, centralized customer call center operations, and service quality have been raised. These issues should be explored further during discovery and at the evidentiary hearings. For Cal-Am's Felton district, the Santa Cruz County Board of Supervisors has authorized the creation of a community facilities district as a financing mechanism for the public acquisition of Felton's water system. On July 26, 2005, a special election will be held for voters to decide on Measure W, the tax measure to finance public acquisition.

⁶ GRC topics specific to Cal-Am will be any savings attributed to the purchase of the stock of its parent company, American Water Works, Inc. by RWE Aktiengesellschaft in January 2003, any reporting requirements required by that merger decision, D.02-12-068, and a showing, as required under D.01-09-057, to support any requested amortization of the acquisition premium paid to Citizens Utilities Company of California.

While the scope of issues is broad, two of Cal-Am's special requests for its Monterey district, Special Requests 2 and 3, are outside the scope of this proceeding. These issues should instead be considered as part of Cal-Am's Application (A.) 04-09-019, where Cal-Am requests that it be authorized a certificate of public convenience and necessity (CPCN) to build, operate and recover costs for the CWP.⁷ In Special Request 2, Cal-Am is requesting a special surcharge to recover an estimated \$15,000,000 in pre-construction costs for environmental studies and engineering for the CWP and in Special Request 3, Cal-Am is requesting fixed and commodity surcharges be approved here to recover the estimated \$150,000,000 in construction costs of CWP. Cal-Am states it is making its proposals in this proceeding in order to more gradually raise rates to cover the project.

MCPOA, MCWRA, MPWMD, ORA, PSMCSD, and Public Citizen oppose Special Requests 2 and 3 being considered here. These parties state that A.04-09-019 is the proceeding to consider any requests related to the CWP, and that the project remains speculative as Cal-Am has yet to secure a project site or comply with the requirement for a public agency partner, and, further, that competing municipal projects and options are being explored. We agree that Cal-Am has not yet defined its CWP in sufficient detail to allow consideration of any rate recovery, and that all costs related to this project should be considered separately in A.04-09-019. Therefore, we remove Special Requests 2 and 3 from consideration in this proceeding.

⁷ This proceeding is suspended until Cal-Am completes and files its Proponent's Environmental Assessment (PEA).

In removing consideration of CWP issues from this proceeding, we do not remove the issue of Cal-Am's lobbying expenses from the scope of this proceeding. Ensuring that no lobbying expenses are included in customer rates is a generic issue. Several speakers at the PPHs voiced concern about this issue, and the Monterey Herald newspaper has contacted the Commission asking for access to documents that Cal-Am submitted to ORA under the confidentiality provisions of Section 583. Pursuant to the RCP, if a party asserts that information is privileged, it must maintain a privilege log showing exactly which documents exist, what portions of documents are alleged to be privileged, and the specific basis for each claim of privilege. (D.04-06-018, *mimeo.*, at 20.) It is important in this GRC to ensure that no lobbying expenses are included in any rate recovery from customers. Information as to what these expenses are (to insure they are not included) thus may also be relevant. We will not evaluate here merits of any line items in special requests 2 and 3, as that will be addressed in A.04-09-019.

Therefore, Cal-Am is directed to file within 10 days a motion to support the confidentiality claim for any lobbying related documents it has submitted in the discovery process, attaching its privilege log to the motion. Interested parties may file a response within 10 days.⁸

We next consider whether to consolidate Cal-Am's Monterey and Felton GRC applications for purposes of evidentiary hearing and decision-making. Consolidation affords administrative efficiencies for interested parties and the Commission and also allows for a broader policy perspective on issues. The

⁸ If the Monterey Herald wishes to file a response, it should also file an accompanying request to intervene in the proceeding. The Commission's Public Advisor's Office may be able to provide useful procedural advice.

Commission has considered the two districts together in the last GRC proceeding and in Cal-Am's pending consolidation request, A.04-08-012. Cal-Am does not object to considering the two applications on the same procedural schedule but does raise a concern about possible delay in issuing a consolidated decision.

We will consolidate the applications here and adopt a consolidated procedural schedule. If circumstances later warrant this order be reconsidered, and good cause is shown, Cal-Am and/or interested parties can make a motion to separate the applications.

5. Procedural Schedule

After discussion at the PHC, the following schedule is adopted:

ORA and Intervenor Testimony served	June 30, 2005
Concurrent Rebuttal Testimony served	July 14, 2005
Settlement discussions noticed by Cal-Am	July 18, 2005
Evidentiary Hearings ⁹	July 27-29, August 4-5, 2005
Opening Briefs filed and served	August 19, 2005
Reply Briefs filed and served	August 26, 2005
Projected Submission date	August 26, 2005
Proposed Decision mailed	November 15, 2005
Final Decision on Commission Agenda	December 15, 2005

Pursuant to Rule 8(d), parties requesting final oral argument before the Commission must include that request in their opening brief. As discussed at the PHC, if Cal-Am wishes to pursue a request to impose interim rates on

⁹ The evidentiary hearings will be held in the Commission's Courtroom; 505 Van Ness Avenue, San Francisco Ca 94102.

January 1, 2006 (assuming if the Commission is not able to render a final decision on its rate cases by that date), it should file a separate motion with its opening brief and follow the criteria set forth in D.04-06-018.

This proceeding is scheduled to be complete within 18 months of this scoping memo, as required by Section 1701.5.

6. Party Status and Service List

On April 18, 2005, Cal-Am filed a motion to deny party status to MCPOA, PSMCSD, and Public Citizen, citing as its main reason that these parties had not shown they will contribute anything beyond what other parties are already contributing. Comments opposing Cal-Am's motion were filed on April 28, 2005 by PSMCSD and on May 6, 2005 by MCPOA. On May 16, 2005, Cal-Am filed a response to withdraw its motion as to MCPOA.

We deny Cal-Am's motion to deny party status to PSMCSD and Public Citizen. Both entities have complied with Rule 54 by fully disclosing the persons or entities in whose behalf they are appearing, the interest of such persons or entities in the proceeding, and the positions they intend to take. While PSMCSD's main interest is in Special Requests 2 and 3, which are no longer within the scope of this proceeding, its protest also touches on Cal-Am's compliance with State Water Resources Control Board (SWRCB) Order No. WR 95-10, an issue which may be relevant considering Cal-Am's Special Request 1 for recovery of all historical costs related to the Carmel River Dam and Reservoir Project. We find PSMCSD and Public Citizen raise issues that are within the scope of the proceeding and any duplication with other parties can be addressed in the hearing process.

On May 5, 2005, Public Citizen and Felton FLOW timely filed their notice of intent (NOI) to claim intervenor compensation in this proceeding pursuant to §1804(a); these requests will be addressed by separate ruling.

On May 12, 2005, The Utility Workers Union of America, AFL-CIO (UWUA) filed a motion requesting to intervene in this proceeding. UWUA states that it represents the employees at Cal-Am and, therefore, intends to remain informed and involved in this proceeding to represent those interests, without causing undue delay or broadening the issues. We find UWUA has made the showing required under Rule 54 and is granted full party status.

The service list for this proceeding is attached to this ruling and any updates will be reflected in the service list on the Commission's Website (www.cpuc.ca.gov). The Commission's newly revised service protocols are set forth in Rules 2.3 and 2.3.1; these rules may also be accessed on the Commission's Website.

Additional parties wishing to participate as a full party to the proceeding must make their request by written motion or on the hearing record and make the showing required under Rule 54. Service list additions for the information only or state service categories can be handled by an e-mail to ALJ Walwyn (cmw@cpuc.ca.gov).

Therefore, **IT IS RULED** that:

1. For purposes of evidentiary hearings, Applications (A.) 05-02-012 and A.05-02-013 are consolidated.
2. This proceeding is categorized as ratesetting and that category determination is appealable under the procedures set forth in Rule 6.4 of the Commission's Rules of Practice and Procedure.
3. Evidentiary hearings are required.

4. Administrative Law Judge Christine M. Walwyn is the principal hearing officer.

5. The scope of this proceeding is set forth in Section 4. Special Requests #2 and #3 of A.05-02-012 are not within the scope of this proceeding and should be addressed instead in A.04-09-019.

6. Within 10 days of this ruling, Cal-Am shall file a motion to support its confidentiality claim for any lobbying related documents it has submitted in the discovery process. Interested parties may file a response within 10 days

7. The procedural schedule and process for this proceeding are set forth in Sections 5 and 6.

8. Cal-Am's April 18, 2005 motion to deny party status is denied.

Dated May 31, 2005, at San Francisco, California.

/s/ Susan P. Kennedy
Susan P. Kennedy
Assigned Commissioner

/s/ Christine M. Walwyn
Christine M. Walwyn
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Assigned Commissioner's and Administrative Law Judge's Ruling and Scoping Memo by using the following service:

☐ E-Mail Service: sending the entire document as an attachment to all known parties of record who have provided electronic mail addresses.

☒ U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Dated May 31, 2005, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.